IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16716 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SARASVATIBEN ALIAS THAKURAINE BHOLASING SHIVPRASAD RAJPUT

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 16716 of 2003

MS SUBHADRA G PATEL for Petitioner No. 1

MS PB SHETH AGP for Respondent No. 1-3

NOTICE SERVED BY DS for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 10/03/2004

ORAL JUDGEMENT

Leave to amend cause title qua respondent no.2.

2. The petitioner above named has preferred this petition under Article 226 of the Constitution of India for appropriate writ, order or direction, for quashing and setting aside the order of detention dated 19/09/03, passed by respondent no.2, for detaining the petitioner u/s.3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short "the Act") on the ground that the petitioner was likely to commit breach of public peace, as the petitioner was involved in offences punishable u/s.66(1)(b), 65(E) and 65(A) read with s.81 of the Bombay Prohibition Act, which is registered at DCB Police Station C.R.No.5717 of 2003 at Surat.

3. The petitioner has contented that she had not committed any offence and the co-detenue, who happens to be the co-accused with the petitioner in the aforesaid criminal case and who also happens to be the son of the present petitioner, has been released by this Court by order dated 04/03/04 passed in S.C.A.No.16632/03. Therefore, the petitioner may also be treated equally and be released from detention forthwith.

4. On receipt of the petition, Rule was issued and in response to the service of notice of Rule, Ms.P B Sheth learned AGP appears on behalf of the respondents. The learned AGP submits affidavit of respondent no.2 which is taken on record. I have heard the learned advocates for the parties and have perused the papers.

5. The petitioner has been detained by the second respondent by order dated 19/09/03, stating that the petitioner was guilty of breach of public peace and public order, as the petitioner was involved in offences referred to hereinabove, wherein the petitioner alongwith the co-accused was found in possession of 1104 bottles of foreign liquor worth Rs.33,120/-.

6. After following appropriate procedure, on receipt of the proposal, the learned Commissioner of Police passed the aforesaid order, which has come in challenge before this Court. At the time of hearing, the learned advocate for the petitioner has drawn my attention to a copy of the judgment dated 04/03/04 passed in S.C.A.No.16632/03, wherein this Court had allowed the petition and directed the release of the detenue.

7. It is not much in dispute that the present petitioner and the petitioner of the aforesaid petition are mother and son. Both of them were allegedly found in possession of foreign liquor, without pass or permit, and

offence was registered against both of them. On account of registration of the aforesaid offence against both of them, proposals were made to the appropriate authority for detaining them under the said Act. After following due procedure, both of them were detained. Therefore, the case of the petitioner is on par with the case of the petitioner in the aforesaid Special Civil Application. On going through the judgment and order in the aforesaid S.C.A., it is noticed that this Court has found that there is no contemporaneous material to exercise powers as contemplated u/s.9(2) of the said Act. No reliance can be placed only on the statement of witnesses for sustaining the order of detention and therefore, it can be said that there is no proper exercise of powers u/s.9(2) of the Act for want of material to exercise powers as stated above.

8. In view of the above position, when the case of the present petitioner is on par with the case of the petitioner in the aforesaid petition, then there is no reason to continue further detention of the present petitioner. Therefore, the detention order against the present petitioner is required to be quashed and set aside on the principle of parity.

10. In aforesaid view of the matter, this petition is allowed. The impugned detention order No.PCB/PASA/184/2003 dated 19/09/2003 passed under the above Act, by respondent no.2 herein, is ordered to be quashed and set aside. The petitioner detenue, namely Sarasvatiben Alias Thakuraine Bholasing Shivprasad Rajput, is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute accordingly. Direct service permitted.

(D. P. Buch, J.)

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